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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 1767th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 20 July 1999, at 3 p.m.

Chairperson: Ms. MEDINA QUIROGA

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of Romania (continued) (CCPR/C/95/Add.7; CCPR/C/66/Q/ROM/1/Rev.1)

1. At the invitation of the Chairperson, Mr. Diaconescu, Mr. Maxim, Ms. Tarcea, Ms. Brau, Mr. Attila, Mr. Moldovan, Ms. Sandru, Mr. Farcas and Mr. Pacuretu (Romania) resumed their places at the Committee table.

2. The CHAIRPERSON invited the Romanian delegation to reply to the additional questions raised by Committee members at the previous meeting.

3. Mr. DIACONESCU (Romania) thanked Committee members for their interesting questions which addressed the main social, political and civil problems facing Romania in its transition towards democracy.

4. Mr. MOLDOVAN (Romania) welcomed the remark made by one Committee member to the effect that things had certainly changed in Romania and people were no longer afraid to tell the truth. He was allowed under Romanian law to reply to questions in his capacity as Assistant People's Advocate (Deputy to the Ombudsman). The views he would express would not be the Government's, but those of an independent body.

5. Providing clarification on the power to legislate, he recalled that the new Constitution adopted in 1991 was based on the principle of the separation of powers. However, although a bicameral approach (with a senate and chamber of deputies) provided certain guarantees, it also made the process of adopting legislation very slow. The situation was compounded when Parliament was in recess. The problem had been resolved by delegating the power to legislate to the Government on such occasions by means of "ordinances". Also, sometimes even while Parliament was in session, situations arose which called for the swift adoption of legislation, and so "emergency ordinances" were issued. They were not connected in any way with a state of emergency, but were simply instruments having the force of law that were adopted by the Government and entered into force immediately.

6. The previous year the Government had felt that the pace of reform must be accelerated and had issued an excessive number of ordinances - more than 200, prompting grave concern among politicians. Recently a draft law had been submitted by the President of the Senate setting forth the basic principles underlying such ordinances and specifying the circumstances in which they could be issued. Ordinances related to matters usually dealt with by ordinary laws, in other words, not human rights and freedoms, which were the subject of organic laws. The Constitutional Court was currently debating the issue of whether the Government should be allowed to issue ordinances during the summer recess.

7. Mr. DIACONESCU (Romania), providing information on the relationship between the prosecution service and other parts of the judicial system, explained that prior to 1991 the prosecution service had supposedly been an

independent body which provided judges with criminal files referred to it by civil and military prosecutors. In 1991, the Government had decided to run down the institution since it had impeded the reform of criminal procedure owing to its wide-ranging competence in such matters. For a number of reasons, it had been difficult to achieve that goal within a short time-frame, but he estimated that the institution would be disbanded in about one and a half years' time. At present, there were still close links between the institution and other bodies within the Judiciary.

8. Ms. TARCEA (Romania), clarifying the different roles of the Judiciary and the police during criminal proceedings, stressed that it was the prosecutors who brought charges against suspects and instituted court proceedings, while the relevant preliminary inquiries were conducted by the police. Only judges were empowered to hand down judgements. The rather complex system clearly had some shortcomings, which the Government was striving to deal with.

9. Replying to a question on the status of judges, she confirmed that Romanian judges earned considerably less than their counterparts in other European countries. Nonetheless, their salaries were still three or more times higher than those of other Romanian officials. At present there was a shortage of judges because suitably qualified candidates were attracted by potentially higher earnings as solicitors and advocates. From time to time the Ministry of Justice held national competitions to fill vacancies.

10. Mr. MOLDOVAN (Romania), responding to queries regarding the secret services, said that such services were subject to civilian control in a number of different ways. First, their activities were monitored by Parliament, through joint parliamentary committees comprising representatives of all political parties. In addition, the secret services were obliged to present annual reports to Parliament during a public hearing, which was broadcast live on national television. Those reports were subsequently published in the national press. A further safeguard was the fact that the Chief of the secret services was a civilian appointed by Parliament. Lastly, the Ombudsman was legally bound to verify the activities of the secret services and to follow up any alleged violations. For that purpose, the secret services were obliged to submit all their files to the Ombudsman on the understanding that their contents would remain confidential.

11. Mr. FARCAS (Romania) said that in its concluding observations on Romania's third periodic report, the Committee had expressed its concern about the status of the Covenant vis-à-vis Romanian legislation, in particular article 49 of the Constitution. As far as his Government was concerned, the hierarchy of the different legal norms in question was quite clear. The 1991 Constitution was the basic law of the nation and provided a general framework for the development of legislation in the field of human rights. According to article 20 of the Constitution, the provisions of international instruments took precedence over domestic legislation. Moreover, article 20 should be read in conjunction with article 11, whereby treaties ratified by Parliament became part of national law. So while the wording of some of the articles of the Constitution might be called into question, it was essential to focus on the implementation of legislation and how practice developed.

12. The Covenant had been cited in Romanian courts of law. The Legislative Council was responsible for reviewing national legislation to ensure its consistency with any modifications of international instruments, including the Covenant.

13. On the basis of articles 11 and 20 of the Constitution, a number of fundamental human rights and freedoms not explicitly referred to in the Romanian Constitution were guaranteed, having been effectively incorporated in domestic legislation through the ratification of the relevant international instruments. They included the Convention relating to the Status of Refugees (ratified in 1995) and the European Convention on the Protection of Human Rights (ratified in 1994). Since the European Convention provided for specific restrictions in the exercise of certain human rights and freedoms, its provisions could be invoked in the event of a challenge to Romanian legislation in that respect.

14. Mr. DIACONESCU (Romania), replying to a question by Mr. Lallah concerning military jurisdiction, said that military prosecutors and judges now had very limited jurisdiction in Romania, namely in cases involving offences committed by military personnel in connection with the discharge of their duty. They had no jurisdiction over civilians or in matters relating to State security and administration. It was likely that the military courts would eventually be disbanded, once the long, arduous process of the reform of the criminal justice system was complete. However, for the time being, their activities were very limited and closely monitored by the administrative staff of the Ministry of Justice, and controlled by means of appropriate amendments to the Code of Criminal Procedure. He would emphasize that prosecutors were not magistrates. Moreover, it was worth noting that the concept of "prisoners" did not exist under Romanian law, which recognized only two categories: persons held in detention pending or during court proceedings and offenders. The former category benefited from special protection from the time of their arrest, including proper legal representation.

15. Ms. SANDRU, responding to comments regarding the police, stressed first and foremost that although there were cases of abuse by Romanian police officers, they were not systematic. Where allegations of abuse were substantiated in a court of law, the police officers concerned were duly convicted. Moreover, even before sentencing, police found guilty of such violations were liable to appropriate disciplinary and administrative penalties.

16. In an effort to reduce the incidence of police abuse, the Ministry of the Interior was laying greater emphasis on human rights education. The subject now formed part of the regular curriculum at the police academy, and special courses were organized on a regular basis for working police officers. The Ministry also issued information brochures dealing with the type of problems often faced by police officers which made reference to the provisions of relevant international human rights instruments.

17. Ms. TARCEA (Romania) said that people could be detained in custody for a period of up to 24 hours if they were suspected of having committed an offence in connection with which the police had already begun inquiries. Where there was a risk that a detainee might try to escape, the initial period

of detention could be extended by a prosecutor, for a period of up to 30 days. Detainees were entitled to appeal against that decision. Any further extension must be ordered by a judge, in accordance with article 145 of the Code of Criminal Procedure.

18. Mr. DIACONESCU (Romania) said it was important to remember that by law any person held in detention must be informed immediately of the grounds of his arrest and be guaranteed adequate legal representation. The average period of pre-trial detention was between 24 and 30 days.

19. Ms. TARCEA (Romania), replying to a question by Ms. Evatt, said that the Higher Council of the Magistracy formed part of the Judiciary. Its members were not appointed solely by the Ministry of Justice but also, and in equal measure, by the Prosecutor-General and the Supreme Court. Their appointment was confirmed by Parliament. It was a body which was completely independent of the Executive and not influenced in any way by the Prosecutor-General or President of the Supreme Court.

20. Ms. SANDRU (Romania), in response to a question raised by Ms. Evatt as to the discrepancy between the increased participation of women in social life and the low level of their representation in political life, said that even in the international arena the movement towards the greater empowerment of women and towards greater recognition of their rights was of comparatively recent date. In a country which was still in the process of transforming itself from a State controlled system into a democracy, the situation was particularly difficult. In times of economic constraint it was traditionally the woman, not the man, who assumed additional family responsibilities, and in the same way it was traditionally men rather than women who tended to become involved in politics. In traditional societies, political life was often characterized by toughness and aggressiveness, qualities which women sometimes lacked. A change in attitude on the part of both sides was therefore needed, and that would take time.

21. It was important to make women aware of their rights and to encourage them to achieve a higher level of political representation. Civil society in Romania was still in its infancy and needed to be further developed. However, she was glad to say that the number of NGOs active in the field of women's rights and human rights generally had increased considerably over the past nine years.

22. On the question of the quota mechanism, elections in Romania were conducted on the basis of lists of candidates put forward by the parties, and it was thus important that as many women candidates as possible should stand. While a greater number of women were now joining political parties, there were still very few in senior positions. Most parties had created their own women's organizations, but those organizations were still weak and tended to be cut off from the rest of society. It was noteworthy that in the elections of 1992 and 1996 women candidatès had, in general, not been supported by women voters. Measures would therefore have to be taken to increase public awareness. In that connection, the role played by international organizations was of great importance: the United Nations Development Programme (UNDP), for instance, had organized a number of projects which had contributed significantly towards women's empowerment.

23. Although there was no specific law making domestic violence a punishable offence, provisions covering violence within the family were included in the Penal Code, and women could seek protection through court orders. The problem was that at present a complaint by the victim was required before a criminal investigation could be initiated. That situation would be remedied by a bill currently before Parliament providing that investigations could be initiated without a previous complaint.

24. Mr. DIACONESCU (Romania) said that there had been cases of abuse by individual police officers, all of which had been investigated. Such cases were infringements of the law and were treated as such, with all the usual consequences. It was not in fact "the practice" in Romania to hold persons in pre-trial detention in police stations: it was against the law to hold someone even for an hour without a formal charge. More training for the police in the proper use of their powers would help to overcome the problem, although fortunately individual cases of abuse were becoming less and less frequent.

25. Ms. TARCEA (Romania) said that in cases where police conduct involved human rights violations, the Penal Code was applied. Unlawful detention and abusive inquiries were punishable under article 266 of the Code. In addition, ill-treatment of an arrested or detained person and torture during an inquiry were punishable under article 267. Between 1 January 1996 and 30 June 1999, 664 police officers had been charged with offences, and 240 had been convicted. The sentences imposed had ranged from 2 to 15 years' imprisonment. Confessions made under torture were considered invalid and could not be used to incriminate anyone.

26. Mr. DIACONESCU (Romania), in reply to the question raised by Mr. Scheinin, said that the State did not have any kind of political attitude towards particular social groups. As he had said earlier, the authorities had set up a number of committees and working groups in order to involve as many people as possible from different sectors of society in the search for a solution to the problem of discrimination against minorities. The problem lay not only in the attitude of one social group towards another, or in the attitude of the police towards the Roma, but also in the lack of education, financial resources and employment in the country generally. However, the Government was grateful to the NGOs for bringing to their attention a number of issues which would need to be tackled.

27. On the subject of homosexuality, he said that the Ministry of Justice had just submitted to Parliament a bill which had reached the stage of second reading. It had not yet been adopted, simply because there had not been enough members present to permit a vote to be taken. Under the bill, homosexuality in itself would not be an offence: only such actions as forcible intercourse with minors would be punishable.

28. Mr. MOLDOVAN (Romania), in reply to a question raised by Mr. Bhagwati, said that, under article 14 of the Ombudsman Act, the Ombudsman was empowered to take action ex officio. Article 14 also provided that complaints could be filed by legal persons, for instance human rights NGOs, as well as by individuals. The Ombudsman was not empowered to appear in court on behalf of a complainant, although he could in certain instances refer complaints to the

Public Prosecutor or to the Higher Council of the Magistracy. That situation was due to the fact that in Romania great emphasis was laid on the principle of separation of powers. The Judiciary had to be seen to be completely independent, and not even the Ombudsman was permitted to interfere in the judicial process.

29. Mr. DIACONESCU (Romania), in reply to a question on the role of the Ministry of Justice inspectors, said that they were ex-judges whose role was to monitor court proceedings and to see, for instance, whether the training of judges in certain courts needed to be improved. Although they could make suggestions, and were sometimes able to speed up proceedings, they had no powers as far as court rulings were concerned. Judges now received better salaries than in the past, to take into account the fact that young lawyers were often reluctant to enter public service because of the greater attractions of the free market. In answer to a further question, he said that legal aid was provided by the Ministry of Justice to persons unable to afford a lawyer.

30. Mr. FARCAS (Romania) said that so far there had been no decision by the Constitutional Court restricting the implementation of any international human rights instrument in Romania. With reference to Mr. Kretzmer's question on paragraphs 15 and 16 of the report, he pointed out that paragraph 58 (g) stated that the use of torture or inhuman or degrading treatment or punishment was formally prohibited under the Constitution and the Code of Criminal Procedure. Paragraph 59 stated, though perhaps not very clearly, that any confession extracted by torture or by other illegal means was null and void, and that even a normal confession was not considered conclusive unless corroborated by other evidence.

31. Concerning the reference to defamation of the country in article 3 of the Constitution, he said that no bill had yet been introduced limiting freedom of expression. Several bills concerning press freedom had been drafted, but they had not acquired the status of law.

32. On the question of the prohibition of secret associations, the intent of the relevant article of the Constitution was to ensure that all associations were registered as such. While political parties were regulated by a law enacted in 1996, associations which were not of a political nature were regulated by a law of 1924, which was in fact very permissive.

33. Ms. CHANET thanked the Romanian delegation for its replies. However, in view of the fact that the delegation included a representative of the Ministry of Justice and that Romania had acceded to the European Convention on Human Rights, she would have hoped to obtain early replies in writing to her questions on technical points. She had been somewhat surprised to hear that "persons who had committed an offence" would be arrested: it would be better to use the formula "persons under suspicion", so that the individual concerned could benefit from presumption of innocence.

34. Neither the European Convention nor the Covenant prohibited the arrest of a suspect for a period of 24 hours. However, she would still appreciate information on the status of arrested persons. Were they detained incommunicado for the entire 24 hours? At what time during that period was

contact with a lawyer permitted? And was provision made for a medical examination? She would also like to know whether the 30-day detention order was issued by the prosecutor, and whether detention for such a period was renewable.

35. Mr. BHAGWATI, on the question of the Ministry of Justice inspectors, said that in his view it was not desirable for representatives of a ministry to be empowered to monitor court proceedings, since that would impinge on the independence of the Judiciary. He would appreciate clarification as to how the members of the Higher Council of the Magistracy were appointed. Was there a time limit within which Parliament had to give its approval to emergency ordinances? Lastly, were decisions of the Human Rights Committee routinely distributed to judges?

36. Mr. DIACONESCU (Romania) apologized for any confusion that might have arisen as a result of his delegation's use of the terms "detention" and "arrest". A suspect detained for a short period became an "accused person" after a detention order was issued by the judge or prosecutor. As already explained, any person detained or arrested was immediately entitled to consult a lawyer and contact his/her family. Every person taken into custody had to undergo a medical examination. The arresting police officer or the prosecutor had to complete a document stating the reasons for arrest, the precise time and, where appropriate, the time of release. The document had to be signed by the detained person or his/her lawyer.

37. Mr. MOLDOVAN (Romania), replying to a question asked by Mr. Bhagwati, said that if the enabling law so required, Parliament had to approve the ordinance before the expiry of the enabling law. In the absence of a specific provision, the parliamentary approval procedure was not subject to any time limit.

38. The CHAIRPERSON invited the Romanian delegation to reply to questions in the second part of the list of issues.

39. Ms. TARCEA (Romania), replying to questions 11 and 12, said that article 27 of the Romanian Constitution had three paragraphs, the first establishing the principle of the inviolability of the home, the second listing possible exceptions and the third setting out the conditions for the application of the second paragraph. Since the search of a residence without a warrant was prohibited subject only to some clearly defined exceptions, the provision was considered to be in conformity with article 17 of the Covenant.

40. With regard to the treatment of homosexuals, she said that, as was well known, the old regime in Romania had been extremely intolerant of unorthodox sexual conduct of any kind. As a first step, the Constitutional Court had, in July 1994, decided to declare unconstitutional paragraph (1) of article 200 of the Penal Code applicable to homosexual acts committed between consenting adults in private. Only acts committed in public and likely to cause a public outcry were now punishable. No precise definition of the concept of "public outcry" had, however, been arrived at to date because attitudes in such matters were resistant to change. A bill for the repeal of article 200 (1) of the Penal Code had been placed before Parliament in 1998 but had been rejected after extensive debate. The 99 persons convicted for homosexual acts in

June 1999 had been charged not under article 200 (1), but with homosexual relations between an adult and a child (art. 200 (2)) or with homosexual relations between non-consenting adults (art. 200 (3)).

41. Mr. MOLDOVAN (Romania), replying to question 13 relating to freedom of religion, said that the recognition or non-recognition of a religious denomination did not affect the individual's freedom of worship, which was clearly and unambiguously proclaimed by the Constitution. The purpose of registration was to provide Churches or religious associations with a legal personality enabling them to have official premises of their own, hold meetings, issue publications, operate private broadcasting stations, etc. A number of religions which had been considered illegal and whose members had been persecuted under the old regime had now been formally recognized by the State Secretariat for Religious Affairs; they included, for example, the Old-Style Orthodox Church (25,000 members) and the Jehovah's Witnesses (22,000). The breakdown of the population as a whole according to religious persuasion was as follows: Romanian Orthodox Church, 86.8 per cent; Roman Catholic Church, 5 per cent; Reformed Church, 3.5 per cent; Greek Catholic Church, 1 per cent; Pentecostal Church, 1 per cent; Muslims, 0.2 per cent, plus smaller numbers of Christian and Mosaic Believers. The criteria for recognition included having a statute in accordance with the Constitution and consistency with general morality and public order. The only two religious associations denied recognition to date were "The Family" and the "Church of Love", whose applications had been rejected because their statutes contained provisions entailing a potential danger to public morals. If those provisions were modified, the decision would no doubt be reversed.

42. It should be noted that more than 700 religious groups had by now been recognized by the State Secretariat for Religious Affairs. They included a number of interdenominational groups, such as the Romanian Bible Society and the Evangelical Alliance, as well as a number of religions new to Romania, such as the Baha'i, the Methodists, the Presbyterians and the Mormons.

43. Lastly, replying to the question concerning new legislation, he said that although Decree No. 177 of 1948 and some other legislation dating back to the Communist era still remained in force, their provisions were no longer applicable. No new legislation had been adopted as yet, but the State Secretariat had drafted the basic text of a new law which had been submitted to the country's major religious associations and to NGOs active in the field of religious freedom, such as Human Rights Watch. An enormous number of amendments had been submitted and certain differences still remained unresolved, so that it had not yet been possible to place the draft before Parliament. It was hoped, however, that the new bill would be presented to Parliament for adoption in the not too distant future.

44. Mr. DIACONESCU (Romania) said that a list of officially recognized denominations would be provided in writing. Turning to question 14, he said that charges arising from the defamation provisions of the Penal Code represent a typical reflection of a society in transition. A detailed discussion of the problem would take too long, and he would confine himself to saying that a law amending the existing provisions was already before

Parliament. Question 15 concerning political parties had already been answered. The text of the new law adopted by Parliament could be provided on request.

45. Mr. MOLDOVAN (Romania) said that question 16 raised one of Romania's most sensitive issues. Although the great majority of Romanian children were living in a normal family environment, the proportion of minors in need was still far too high. Thus, there had been 84,000 children in institutions in 1993, 104,000 in 1994 and 98,000 in 1997, when a new policy of promoting foster care had been adopted, with the result that the number of children placed in foster families had risen from about 11,000 in 1996 to 44,000 in 1998.

46. The number of street children countrywide was estimated at 4,300, including 2,000 living in the streets all the time; 6 per cent of all street children had never lived anywhere else. Children from normal families accounted for 42 per cent of street children, while 35 per cent came from single-parent or otherwise dysfunctional families. In terms of education, 45 per cent of street children had had less than 4 years of schooling, 35 per cent between 5 and 8 years, and 20 per cent had received no schooling whatsoever. The breakdown by age was: 38 per cent between 14 and 18, 35 per cent between 11 and 13, 15 per cent between 7 and 10, and 5 per cent under 10. Half of the street children had never had contact with their families and 67 per cent of the other half described the relationship with their families as "very bad". Children abandoned by their parents in hospitals, often under a false name, represented another serious problem, especially from the point of view of schooling. As to children in conflict with the law, the figures provided earlier covered those placed in reform schools as well as those in prison, the great majority of the children concerned coming from rural areas.

47. Although the number of government agencies and NGOs working on problems involving children, especially street children, was steadily growing, no significant improvement had as yet been achieved. Possible solutions included improving social services and child protection agencies at the district level, helping poor families to keep their children at home, enhancing the responsibility of teachers, developing social services at the NGO level, providing shelters and day centres for street children, imposing penalties for violence within the family, and providing special social services for street children aged over 16 in an effort to forestall the emergence of a second generation of street children born in the streets.

48. Mr. DIACONESCU (Romania) said that figures relating to question 16 would be supplied in writing.

49. Mr. ATTILA (Romania), replying to question 17, said that the Council for National Minorities set up as a consultative body in 1993 had seen its name changed to "Council of National Minorities" after the 1996 elections to reflect the fact that its membership was now composed of representatives of national minority organizations. A Department for the Protection of National Minorities had been set up within the Government in 1997 and included a National Office for Roma, in addition to five offices in the regions where

most of the minorities were living. The Department and the Council were in permanent collaboration with each other and most problems were discussed at joint meetings.

50. So far as the legislative framework was concerned, the new Education Act included provisions designed to promote learning in the mother tongue at high-school and university level, as well as other provisions designed to enhance the rights of national minorities in the field of education. Legislation had also been enacted in relation to the restitution of property to national minorities (Jewish, Hungarian, German and other), and a start had already been made on returning buildings and other property to those communities. The Department for the Protection of National Minorities had also prepared draft laws on the use of the mother tongue in dealings with local authorities and had embarked on the drafting of a law on the elimination of all forms of discrimination, whose provisions would extend not only to minorities but also to sectors of society such as children, women, persons with an unorthodox sexual orientation, etc. Work was in progress on the procedure for the ratification of the European Charter for Regional and Minority Languages, and a multidisciplinary research institute on minorities was to be established shortly.

51. In response to paragraph 18 of the list of issues, he said that the Department for the Protection of National Minorities took the view that the problems of the Roma minority were multidimensional. The ethnic aspect was compounded by problems relating, for example, to health, social safeguards and education. A Sub-Committee for the Roma had therefore been set up within the Inter-ministerial Committee for National Minorities to develop a national strategy for Roma communities. A special funding programme for pilot projects in the areas of health care, social integration and education had been launched in June 1999. In addition, most projects financed by the budgetary fund and inspired by the European campaign against racism and intolerance focused on Roma issues.

52. There were no legal restrictions on Roma participation in civil society, for example in politics and education. Over 50 Roma NGOs and other bodies dealing with Roma issues were active in Romania. In addition to holding a seat in the Chamber of Deputies, the Roma Party had 137 local councillors, 21 county councillors and 1 mayor. Roma students were admitted on a preferential basis to such branches of higher education as social assistance and teacher training. The private sector was the main culprit in cases of discrimination in employment. That problem would be addressed in the bill on the elimination of all forms of discrimination, which would make such conduct a punishable offence.

53. Most international treaties, including the Covenant, had been translated into the major minority languages - Hungarian, German, Ukrainian, etc., a project that had been supported by the Department for the Protection of National Minorities and NGOs. Although it had been impossible to solve all minority problems within the short period since the establishment of the Department, he hoped the Committee would agree that the progress achieved in recent years augured well for the future.

54. Mr. FARCAS (Romania), responding to paragraph 19 of the list of issues, said that the third periodic report and the Committee's conclusions and recommendations thereon had received extensive media coverage and prompted the public authorities to initiate changes in existing institutions and public practice. As a rule, the periodic reports were prepared jointly by a number of different departments and ministries, including the Ministry of Justice, the Ministry of the Interior, the State Secretariat for Religious Worship, the Department for the Protection of Children and the Department for the Protection of National Minorities, all of which later discussed the Committee's conclusions and recommendations. The media and interested NGOs would be directly involved in informing Romanian public opinion of the results of the present exercise. The Committee's general comments were also greatly appreciated. In particular, the Department for the Protection of National Minorities had drawn heavily on the principles laid down in general comment 23 relating to article 27.

55. Mr. YALDEN said the Committee was pleased to discuss the Covenant with such a well-informed delegation. The report by the Assistant People's Advocate had been particularly interesting. He hoped that when the new bill on homosexual rights was presented in Parliament in the autumn, there would be a quorum of members present. He asked for more detailed information, in writing if necessary, about the return of property to religious groups, particularly the Greek Catholic Church.

56. With regard to conscientious objectors, the 24-month period of alternative service, compared with a 12-month period of military service, must be regarded as punitive. Were there any plans to change the existing legislation? The long list of recognized religious groups did not seem to include the Jehovah's Witnesses, who had allegedly suffered discrimination in Romania.

57. The Committee's previous conclusions and recommendations had underlined the serious situation of the Roma. According to recent reports by the Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination and xenophobia, the Council of Europe, the European Union, Human Rights Watch and Amnesty International, the situation had not changed. The figures for participation by the Roma in education, and particularly schooling in the Roma language, were very low. He asked what specific practical steps were being taken to address the problem. Was it true that no action had been taken on complaints brought to the attention of the prosecution service by the Department for the Protection of National Minorities? He wished to know how many complaints of discrimination the Ombudsman had received from members of minority groups, particularly the Roma, and what steps had been taken to address the issues they raised.

58. Mr. KLEIN said he was grateful to the delegation for its comprehensive replies to the Committee's questions. Although the provisions of the Penal Code concerning defamation were to be amended, they were still lex lata and incompatible with the provisions of the Covenant. He was concerned that the provision of article 31 (4) of the Constitution requiring the media to provide correct information to the public could be used to suppress criticism of the Government. Freedom of the press and the media in general was an essential means of safeguarding democracy in an open society.

59. He had doubts about the composition of the National Broadcasting Council, which supervised broadcasting in Romania. Members were apparently designated by the President, Parliament and the Government. There should be some provision for representation of opposition parties and minority groups to ensure the independence of the mass media.

60. He noted that the brochure on the Romanian education system that the delegation had circulated made no mention of language education for the Roma and Sinti minorities.

61. He inquired about the status of persons who had returned to Romania after the change of regime, many of whom had belonged to ethnic minorities. Had the returnees recovered confiscated property? Had those who had been forced to pay official fees and bribes to leave the country been granted compensation? Were minorities authorized to accept foreign financial aid, for example from Hungary or Germany?

62. Mr. KRETZMER said that, although article 31 of the Constitution guaranteed free access to information, NGO sources claimed that there were no legal mechanisms to enforce that right. He asked whether citizens had an enforceable right to obtain information. Was there provision for access to information regarding the files of the security services under the former totalitarian regime and, if so, under what conditions?

63. In its replies to questions from the Committee concerning the third periodic report, the Romanian delegation had stated that the activities of certain anti-Semitic and xenophobic groups represented a danger to the country's stability. Had there been any cases of prosecution for racial incitement?

64. The organizers of public assemblies or demonstrations in Romania were required to inform the local authorities who, according to paragraph 204 of the report, could prohibit the event under certain circumstances. Could that decision be challenged in the courts with sufficient dispatch to enable the ban to be lifted in time?

65. Mr. SCHEININ said that article 24 of the Covenant imposed a clear obligation on States parties to take affirmative action to promote children's rights. Moreover, article 24, paragraph 1, stipulated that every child must be registered immediately after birth and given a name.

66. To what extent was education for minorities still based on the notion of assimilation? Were minority languages recognized as having intrinsic value? He stressed that the State had a duty to protect the linguistic identity of minority groups.

67. Following considerable discussion, the tide of opinion among the Romanian public authorities had recently turned against the idea of a Hungarian-language university. Could the delegation account for the sudden change in policy on that issue and when was a final decision expected?

68. Mr. AMOR said he was pleased with the delegation's comprehensive and precise responses to the Committee's questions. Romania was still in a transitional period but it was clearly determined to press ahead with the requisite reforms.

69. With reference to the bill on religious freedom that had been drafted in 1993 at a time when many Eastern and Central European countries had been opening up to new religions, he wondered whether the waning of enthusiasm for more liberal legislation was related to experiences in countries such as the Russian Federation. The latest version of the Romanian bill had been compared unfavourably by independent observers with the earlier draft. He urged the authorities to speed up the enactment of appropriate legislation, especially since Decree No. 77 of 1948 was still on the statute book and could be used for improper purposes.

70. He asked whether reports that children received religious education against the wishes of their parents were well-founded. The return of property to the Orthodox Church had initially proceeded apace but had then slowed dramatically. Was the property in question being used for public purposes or were there other reasons for holding up the restitution process? Could political parties be founded on religious principles? Was there a clear separation between religious and political activity?

71. Article 20 (2) of the Constitution stated clearly that international treaties took precedence over internal legislation, while article 20 (1) stipulated that the Constitution was to be interpreted in the light of such treaties. He wondered in that case whether article 4, paragraph 2, of the Covenant, which prohibited restrictions on certain rights, even in times of public emergency, could be considered to have constitutional force in Romania.

72. Mr. POCAR said he appreciated the enormous progress that had been made in the realization of human rights in Romania in recent years, particularly since the State party's submission of its second periodic report.

73. The fact that a number of bills submitted by the Government had been rejected indicated that in some cases the Government's reforming zeal was not matched by parliamentary or public opinion. The Committee had encouraged the Government, in its conclusions and recommendations on the third periodic report, to adopt a more vigorous approach in opposing such attitudes. The fact that bills were not adopted did not absolve the State party from its obligations under the Covenant, for example in the area of freedom of expression. He sincerely hoped that the new bill dealing with that subject would be adopted in the autumn and that it would abolish the jurisdiction of military courts in cases pertaining to freedom of expression. He feared that the restrictions on freedom of expression allowed under the Constitution, especially articles 30, 31 and 49, were wider than those permissible under the Covenant. If the new bill incorporated those restrictions, it might not fully comply with the Covenant.

74. He was not convinced that the practice of registering religious groups was compatible with the provisions of the Covenant. Article 18, paragraph 3, allowed States parties to impose certain restrictions on the way religions or beliefs were manifested but the exercise of preventive control through

non-registration of a new religious group was an unacceptable restriction on freedom of opinion. Presumably the former Romanian regime had viewed freedom of conscience as a potential danger to the State but its methods should now be abandoned.

75. Ms. EVATT thanked the delegation for its extensive replies. She asked whether the repeal of the legislation restricting freedom of expression would lead to the immediate release of imprisoned journalists. According to paragraph 241 of the report, religious education was a compulsory subject in primary education under the Education Act and was organized on the basis of different religions. Was there any provision for students to be exempted from religious education?

76. The CHAIRPERSON invited the delegation to respond to the Committee's questions at the following meeting.

The meeting rose at 5.55 p.m.

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HUMAN RIGHTS COMMITTEE

Sixty-sixth session

SUMMARY RECORD OF THE 1768th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 21 July 1999, at 10.a.m.

Chairperson: Ms. MEDINA QUIROGA

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GE.99-43093 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of Romania (CCPR/C/95/Add.7; HRI/Corr.1/Add.13/Rev.1; CCPR/C/66/Q/ROM/1/Rev.1) (continued)

1. At the invitation of the Chairperson, the members of the Romanian delegation took places at the Committee table.

2. The CHAIRPERSON invited the Romanian delegation to reply to the questions which had been left pending at the previous meeting.

3. Mr. MOLDOVAN (Romania) provided clarifications concerning the restitution of property to the Greek Catholic Church. The Greek Catholic religion had been prohibited in Romania between 1948 and 1989. During that period, most practising Greek Catholics, under threat of imprisonment, had converted to the Orthodox religion, thus explaining the conversion of Greek Catholic churches into Orthodox churches. Once Greek Catholics had again been able lawfully to practise their religion, they had sought the restitution of their places of worship from the State. However, since it was not the State that had confiscated those places, it had merely been able to refer them to the authorities of the Orthodox Church, who in turn had declared themselves no longer competent to settle the question, believing that negotiations should be held with the local communities. The problem was thus far from simple. However, a recently adopted law provided that, in communities having two or more churches, any disused church that had originally belonged to the Greek Catholic Church should be returned to it. Although that solution had had a calming effect, it was nevertheless inadequate, and, consequently, the State was now helping the Greek Catholic Church to construct new buildings.

4. The State had undertaken to restitute in full any land, churches, houses and general property which had been confiscated or nationalized under the communist regime. As for places of worship, it was the Orthodox Church, being the main religious confession in Romania, which had lost the most under that regime.

5. As a religious group, the Jehovah's Witnesses did not have a very good public image, in particular because its members refused certain forms of medical treatment, such as blood transfusion. Nonetheless, they enjoyed full legal status in Romania and were free to disseminate their publications. Moreover, the ombudsman maintained regular and good relations with their representative.

6. As for alternative military service, he was not in a position to judge whether article 12 of Law No. 46/1996, which instituted military service of 12 months and alternative national service of 24 months, created a simple difference in treatment or, rather discrimination. He could, however, indicate the reasons behind that choice: first, the effort made was not the same for conscripts who performed military service as for those who performed another form of national service, and secondly, as the country needed soldiers, it would be unreasonable to encourage large numbers of the

population to avoid military service. It should be added that the concept of alternative national service was new to Romania and that the modalities could come under future review on the basis of public reactions and army requirements. In the future, Romania might also move in the direction of a professional army, therefore attaching less importance to compulsory military service.

7. Lastly, he said that, pursuant to Act No. 84/1995, religious education was compulsory at the primary level and optional at the secondary and higher levels. With the consent of his or her parents or legal guardian, a pupil chose the religion which he or she wished to study. The main problem was the lack of trained teachers who could provide that education. In Bucharest alone, for example, there was a shortage of no less than 800 teachers, a situation which was bound to have an adverse effect on the quality of teaching, even though it was gradually improving.

8. Mr. ATTILA (Romania) said that the right to learn and to be instructed in one's mother tongue was a constitutional principle. That principle was reaffirmed in the new education law, under which everyone had the right to be taught in and study his or her mother tongue in primary, secondary, vocational and higher education. Special classes had therefore been established where pupils so requested.

9. Although there was nothing in the new education law to prohibit the establishment of a State university dispensing instruction in Hungarian, he said that it would be difficult in practice to set up such an institution. The Hungarian community had initially accepted the interim solution of establishing a multicultural university. The Government had then taken the decision, in 1998, to establish a bilingual university where instruction was conducted in Hungarian and in German. Three opposition parties which were against that project had instituted legal proceedings. The Government had won one of the three cases brought and the two others were currently under appeal.

10. Teaching in the Roma language posed considerable problems as it had been a purely spoken language only a few years earlier. Nevertheless, a common alphabet, vocabulary and grammar had been formulated for the various dialects of the Roma language and, through the joint efforts of the Ministry of Education, the Department for the Protection of National Minorities, various NGOs, Roma organizations and international bodies, classes offering tuition in the Roma language and classes for the study of the Roma language had been established in some primary schools. However, the process was far from complete. In particular, there was still a need to recruit Roma-speaking teachers for all the academic subjects.

11. With regard to the property that had belonged to some minorities, he said that a general bill of law on restitution was currently being debated in the Parliament. Pending its adoption, which was expected in autumn 1999, it had already been decided that more than 60 buildings belonging to community or minority churches should be returned. More than 10 of them had already been returned to their former owners. Individuals, being unable to apply to the Department for the Protection of National Minorities, which dealt only with property belonging to religious or other organizations, could always bring a legal action. The Department for the Protection of National Minorities had

already, on several occasions, instituted proceedings in respect of racial discrimination and incitement to racial hatred. Several cases involving racist slogans, racist articles in the press and discrimination in employment were currently being investigated and a case involving incitement to racial hatred was being heard by the courts.

12. Finally, in reply to a question by Mr. Klein, he said that the law contained a provision under which organizations of minority groups could obtain a subsidy, chargeable to the State budget, to finance part of their activities. The law did not stipulate how the rest of their activities should be financed. However, many organizations received other public funds in addition to those charged to the State budget.

13. Mr. DIACONESCU (Romania), addressing the question of the files of the former security services, said that the Parliament had recently adopted a bill of law which would probably enter in force in autumn 1999 and under which any citizen would be entitled to free access not only to the files concerning him or herself but also to those of any person standing as a candidate for a decision-making post in an administrative or political body.

14. The CHAIRPERSON thanked the Romanian delegation for the abundant and detailed information provided, which reflected the progress made in regard to the promotion and protection of human rights. In that regard, note should be taken of the review of the legislation in order to bring it into conformity with the Covenant and the creation of the Department for the Protection of National Minorities. Progress had also been made in the administration of justice, as shown by the application of the principle of the irremovability of judges.

15. The Committee was aware of the immensity of the task facing the Romanian authorities, which involved the modification of behaviour that had been standard practice for decades. However, several matters were still giving rise to concern. The most serious was possibly the situation of children in Romania, especially street children and abandoned children. The State party should do everything possible to provide them with the protection to which they were entitled and, in particular, should ensure the appropriate registration of their identity. Moreover, discrimination against several population groups - the Roma minority and women, for example - had not totally disappeared and the State party should intensify its efforts in that field.

16. The Committee had noted that article 49 of the Romanian Constitution might restrict the exercise of some rights or freedoms on grounds that went far beyond those provided for in the Covenant. In addition, the proclamation of the state of emergency did not seem to be subject to precise restrictions and the decrees promulgated thereunder might entail violations of human rights. Hence, it was important that the Romanian authorities should adopt, as soon as possible, the organic law that was being considered in that connection.

17. The links between the executive and the judicial authorities were also a matter of concern. It had been stated that the Minister of Justice was responsible for ensuring the unequivocal interpretation and application of the law throughout the national territory, which was evidently contrary to the

Covenant. Moreover, the tenor of paragraph 139 of the report caused concern as it bore witness to the authority that the Ministry of Justice exercised over the magistracy. Other aspects of the administration of justice also required clarification, particularly those concerning trainee judges, the powers of the Prosecution Service and the jurisdiction of the military courts. Reference should also be made to other matters of concern, such as the shortcomings in the regulations concerning the use of firearms, the question of domestic violence and its prevention and the provisions of article 31, paragraph 4, of the Constitution concerning the right to information. Finally, it should be borne in mind that it was not only the Government but the State party, in other words all its organs, including the Parliament, which was responsible for the fulfilment of the commitments that it had made when ratifying the Covenant.

18. She hoped that, before the consideration of the next periodic report of Romania, the authorities of that country would continue their efforts to improve the administration of justice and the protection of human rights in general and she wished them every success in that regard.

19. Mr. DIACONESCU (Romania) welcomed the dialogue that had taken place with the Committee, the observations and suggestions of which constituted valuable guidelines for the Romanian authorities, particularly in regard to the establishment of clear and precise standards governing the various fields of civil and political life. Although the process of promoting and protecting human rights in Romania had certainly not been completed, it was well under way and the authorities were resolutely determined to settle, as soon as possible, several delicate questions, some of which had not been addressed during the consideration of the report. In that connection, he referred to the question of the shortage of financial resources, the security problems that were currently affecting the whole of the region and the question of the protection of Romanians living abroad, concerning which the Romanian authorities might well need the Committee's advice in the future.

20. The CHAIRPERSON announced that the Committee had thereby completed its consideration of the fourth periodic report of Romania.

21. The Romanian delegation withdrew.

The meeting was suspended at 10.55 a.m. and resumed at 11.20 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Report of the Chairperson on the Eleventh meeting of chairpersons of human rights treaty bodies (31 May-4 June 1999)

22. The CHAIRPERSON, presenting the draft report of the Eleventh meeting of chairpersons of human rights treaty bodies (document without a symbol, in English only), which had been distributed to the members of the Committee, said that the meeting had been rather particular insofar as the special rapporteurs of the various bodies had participated and the chairpersons of the treaty bodies had also had a long exchange of views with the representatives of the States parties. The latter had expressed the hope that the six treaty monitoring bodies would coordinate their work more closely and endeavour to

find solutions to facilitate the task of presenting periodic reports. For their part, the chairpersons had explained the common difficulties faced by all the treaty bodies due, in particular, to the inadequacy of the resources allocated to the various secretariats. Some chairpersons had requested the representatives of States parties to ensure a balance in regional and gender representation during the election of members of treaty bodies.

23. Mr. Ramcharan, the Deputy High Commissioner for Human Rights, had referred to various aspects, which were reflected in paragraphs 16 and 17 of the draft report. It was particularly noteworthy that the High Commissioner hoped to launch a campaign to raise funds for all the treaty bodies from States parties, businesses and other institutions likely to collaborate and she hoped to secure funds for the plan of action for the three committees concerned, namely the Committee against Torture, the Committee on the Elimination of Racial Discrimination and the Human Rights Committee. The Chairperson had inquired why that initiative had been confined solely to the three above-mentioned committees while the initial idea had been to conduct a more comprehensive campaign in favour of all the treaty bodies. However, her question had remained unanswered.

24. The High Commissioner was said to be currently considering ways to constitute, within her secretariat, a team which would be responsible for all the procedures concerning the communications brought before the relevant treaty bodies. Mr. Ramcharan had also proposed the publication of a handbook for States parties which would contain the core elements of the jurisprudence of the various treaty bodies as well as a number of other documents of interest to all the States parties (decisions concerning communications, general comments or recommendations, concluding observations following consideration of the report of a States party, etc.).

25. Ms. Anderson, the Chairperson of the fifty-fifth session of the Commission on Human Rights, had said that the Commission had organized "special dialogues" on some issues and suggested that, with a view to ensuring closer cooperation between the various committees, the Commission should in future consult the other treaty bodies in order to determine the topics of those dialogues. Some chairpersons had requested that the representatives of their bodies be granted formal status to enable them to attend the sessions of the Commission on Human Rights. The Chairperson of the Human Rights Committee had expressed the opinion that the treaty bodies did not need to be represented by their presiding officer and, if necessary, the latter should be able to delegate another member of the body. The same question had been raised in relation to participation in sessions of bodies such as the Economic and Social Council and the General Assembly of the United Nations, in which some chairpersons had indicated a wish to participate in their official capacity.

26. Following the meeting with the representatives of State parties, the chairpersons of the treaty bodies had recommended the establishment of a working group, consisting of members of each of the treaty bodies, to explore the possibility of drafting common guidelines for the presentation of reports by States parties. It had also been proposed that the committees should extend reciprocal invitations to attend each other's sessions, particularly

when matters scheduled for consideration under an agenda item, such as general comments, were of mutual interest. Ms. Bonoan-Dandan, Chairperson of the Committee on Economic, Social and Cultural Rights, had also suggested that it would be helpful to have a handbook, which could be prepared by members of universities, on the interpretation of the various instruments.

27. Another issue discussed at length had been the content of a letter sent by Mr. Ramcharan to the Eleventh meeting of the chairpersons of treaty bodies, of which a copy had been distributed to the members of the Committee. According to that letter, the High Commissioner was considering the possibility that the United Nations in general and the treaty bodies in particular might directly involve business and corporate entities in the protection of human rights. Since that question had not previously been discussed in the Human Rights Committee, she said that, in her opinion, it would be totally inappropriate for the treaty bodies to deal directly with corporate entities and, in accordance with their mandate, they should continue to address the States parties in order to call upon them to ensure full respect for human rights by all, including the said entities. She requested the members of the Committee to express their views on that matter.

28. The Eleventh meeting had also considered a letter from some NGOs drawing the attention of the treaty bodies to the problems encountered by defenders of human rights in the fulfilment of their mission. A copy of that letter had also been distributed to the members of the Committee.

29. Cooperation between the treaty bodies and the special rapporteurs in connection with the consideration of reports of States parties had also been discussed. It had been agreed that it might be useful to have access to the report prepared by a special rapporteur before considering the report of a State party in order to have a better idea of the human rights situation in that State. Some special rapporteurs had expressed a wish to have periodic informal contacts with the treaty bodies during which they could pass on information that would be useful during the consideration of the reports of States parties.

30. Finally, the Eleventh meeting had been preceded by a workshop, attended by the chairpersons of the treaty bodies and the special rapporteurs, on the question of gender integration in the human rights protection system.

31. Mr. LALLAH fully shared Ms. Medina Quiroga's reservations concerning the suggestion by the Office of the High Commissioner that direct contacts should be established with businesses or enterprises. He also recalled that, in his introductory statement at the opening of the session, the Deputy High Commissioner for Human Rights had indicated, in a diplomatic manner, that the question of human rights was of great importance to the Organization but, unfortunately, the latter lacked the financial resources needed to address it. States parties often adopted a very similar approach: they declared themselves quite willing to improve the human rights situation but attributed difficulties in that regard to their lack of resources. To discourage States parties from putting forward that argument, instead of making a direct approach to businesses and enterprises with a view to finding solutions to that problem the United Nations would be better advised to establish links with financial institutions such as the World Bank, the Asian

Development Bank, the African Development Bank or other institutions protecting the interests of the private sector and of the businesses with which it had been suggested that the Committee should establish contacts. They were even more important at the present time when privatization was the key word and entailed a transfer of power from Governments to private institutions which were not answerable to the people for their acts. It might be possible to find ways for those institutions, which were usually indifferent to the question of respect for human rights, to take that aspect into account in their relations with Governments and to bear in mind the obligations undertaken by the States parties with which they were dealing.

32. The CHAIRPERSON said that her remarks had possibly been misunderstood. A distinction should be made between the question of a campaign to obtain supplementary resources from private businesses and organizations and the question of the treaty bodies making the said businesses responsible for the protection of human rights. It was on the latter question that she had explicitly requested the opinion of the members of the Committee.

33. Ms. CHANET wished to know, first of all, the context in which the workshop on gender integration in the human rights protection system had been held prior to the meeting of chairpersons of treaty bodies and the results that it had produced. With regard to the meeting itself, she was increasingly concerned at the course that it had taken. Although originally organized to enable the treaty bodies to engage in an exchange of views aimed at improving the effectiveness of their activities, it had been gradually transformed into a gigantic forum the agenda of which had been drawn up by the High Commissioner for Human Rights without the least consultation with the bodies concerned, in which representatives of a vast range of intergovernmental bodies and organizations and NGOs had participated and in which the concerns of the treaty bodies had often been sidelined. Then, there were the questions raised by Mrs. Bayefski's study, the aims of which remained vague, and the draft document on briefings for new members of treaty bodies, which gave the impression that the latter had no notion of law, although its purpose was simply to inform them of the support that the secretariat could provide for the various bodies. However, there were some positive aspects. The aims of the Plan of Action referred to in paragraph 66 seemed clearer in the revised version of that document than in the initial draft that had been presented at New York, although further efforts were needed to ensure that no ambiguity remained. She welcomed the recommendation that the treaty bodies should report directly to the General Assembly as was done, for example, by the International Law Commission.

34. Ms. GAITAN DE POMBO thought that the meeting of chairpersons of treaty bodies had been really useful not only due to the fruitful contacts that the chairpersons had been able to make but also by virtue of the presence of other bodies, NGOs and representatives of Member States, in spite of the risk of sidelining that had been pointed out by Ms. Chanet. She also thought that it was important to establish an ongoing dialogue with the special rapporteurs. In fact, as she had realized in her own country, Colombia, which had received almost all the special rapporteurs, lack of coordination frequently led to a loss of time and money and was even detrimental to the effectiveness of the

mission. The recommendations of the various treaty bodies and those of the special rapporteurs often overlapped or were frankly contradictory. From that standpoint, a permanent coordinating mechanism could prove extremely useful.

35. Mr. Lallah's proposal to the effect that contacts should be established with international financial institutions deserved support. On the other hand, as the Chairperson had pointed out, it was the States that were subject to international law and were therefore responsible for violations that might be committed by the private businesses operating in their territory.

36. Further details concerning Mrs. Bayefski's study would be welcome. In particular, it would be interesting to know what reactions it had produced at the meeting and the proposals to which it had given rise. Finally, in view of the significant work that it had accomplished and its role as a "quasi-judicial" body, the Committee met all the necessary conditions for its annual report to be addressed directly to the General Assembly of the United Nations and the proposal made to that effect in the report on the meeting should be supported.

37. Ms. EVATT fully agreed with Ms. Chanet that the treaty bodies no longer had any control over the meeting of their chairpersons. That was partly due to the fact that they had not considered ways to derive optimum benefit from those meetings and that they did not always make the necessary follow-up efforts, often not taking the trouble to express their position on the meeting's various agenda items.

38. Paragraph 17 of the report referred to the establishment of a core team to service the communications procedures of the treaty bodies. In that regard, the Committee should examine the impact that such a measure would have on its work. The recommendation contained in paragraph 51 of the report, to the effect that the treaty bodies should be represented when their annual reports were considered by the General Assembly, was a step in the right direction and should therefore be supported. With regard to the recommendation contained in paragraph 55 of the report on the meeting, the Committee not only could but should pay close attention to the situation of persons infected with HIV/AIDS during the examination of the reports of States parties. Since most cases involved a problem of information, the Committee's Working Group had requested WHO to draw the Committee's attention to cases which, in its opinion, should be discussed with the delegations of the countries concerned. Hopefully, the present shortcomings could be remedied in that way.

39. In her opinion, the recommendation contained in paragraph 61 should be warmly welcomed, particularly as the Committee was already cooperating with the special procedures which were making a commendable contribution to the formulation of written questions for States parties. Furthermore, the measures recommended in paragraph 65 should make it easier for States parties to bear the burden of preparing reports on the application of six instruments, the provisions of which often overlapped. In that connection, it would be helpful if one or two sessions of the next meeting held by the chairpersons of treaty bodies were devoted to an examination of the common topics of various instruments in order to determine the nature of the changes that could be made. The indicators referred to in paragraph 68 of the report should also

form the subject of consultations as the members of the various treaty bodies might be able to make a contribution in that field. Finally, with regard to the question of the responsibility of private businesses, States could be encouraged to set standards to deal with violations committed by multinational corporations. Since those corporations were operating in several countries, the Committee could propose joint action by the States concerned.

40. Mr. KLEIN said that the proposal to the effect that a representative of the treaty bodies should be granted formal status in the Commission on Human Rights should be viewed with caution. In fact, those bodies, which consisted of independent and impartial experts, were totally different from the Commission which, for its part, played a political role. In that respect, it was surprising that the chairpersons of the treaty bodies had agreed to such a proposal which had not even been discussed. Accordingly, the Committee should give further thought to that question.

41. Mr. SCHEININ fully shared Mr. Klein's opinion and thought that the Committee would not be able to discharge its functions in an appropriate manner unless it remained independent of political bodies. Moreover, he saw no advantage in separate meetings between chairpersons of treaty bodies and representatives of States parties. In addition, the suggestion in paragraph 50, to the effect that those chairpersons might be in favour of the idea that the comments of States parties on the concluding observations of treaty bodies should be incorporated in their annual reports, was disturbing, to say the least, as that might allow scope for all sorts of horse-trading. The concluding observations marked the end of the process of considering the reports of States parties and the best follow-up action by States would be to begin preparations for the presentation of their next report. In paragraph 38 of the report on the meeting, attention was drawn to the concern expressed by States parties that the reporting obligation constituted a major obstacle to the ratification of international instruments. Endorsement of that argument would be tantamount to acceptance of the idea that ratification should not entail any commitment, which was absurd. The submission of reports constituted an obligation that formed an integral part of the process of applying the ratified instrument.

42. With regard to the question of the responsibility of private businesses in respect of violations of human rights, it should be pointed out that the Committee had often had occasion to examine the baneful consequences of the activities of multinational corporations on the rights of persons, but it had done so from the standpoint of the responsibility of the States exercising jurisdiction over those corporations. Most of the cases that had been examined in that context involved violations of the rights of indigenous peoples and minorities as a result of concessions granted by public authorities to private companies. In its reply to Mr. Ramcharan's letter, the Committee should review the various cases in which it had raised the question of a State party's responsibility for the activities of a private company. In the decisions that it took on such matters during its consideration of communications, the Committee should also clearly indicate the name and the role of the company involved and the reason why the Committee held the State party responsible for the violations that the company had committed. At all

events, the Committee was not obliged to hear the viewpoint of private companies; it could simply request the States concerned to give an account thereof in their reply to the communications.

43. Without going into the details of the Plan of Action referred to in paragraph 66, he noted another misunderstanding. In his opinion, it should be clearly specified that the Committee provided States with guidelines but could not offer them any form of technical assistance in the preparation of their reports. In fact, the Committee could not act as judge in a case in which it had been involved.

44. Mr. AMOR said that, in his view, it was extraordinary that, until 1993, the chairpersons of treaty bodies, the special rapporteurs and, in general, all the persons concerned with the defence of human rights had maintained no contact with each other and had not engaged in any reciprocal exchanges of information to enable each of them to discharge, as efficiently as possible, the functions entrusted to him. In that regard, the meeting of chairpersons of treaty bodies was both useful and necessary in the quest for joint solutions to problems which, although sometimes appearing to be simply of a material nature, in actual fact were of fundamental importance for the smooth functioning of the bodies and mechanisms concerned. In general, respect for human rights was posing an increasing number of problems at a time when the material, human and financial resources needed for their solution was constantly decreasing. Hence, all those difficulties required a joint approach so that the members of treaty bodies and the special rapporteurs could engage in their activities in acceptable conditions.

45. In his opinion, it was likewise abnormal to gradually adopt a logic of standardization, bureaucratization and control from above, which hardly seemed to serve the cause of human rights. In the exercise of their functions, the members of treaty bodies and all the special rapporteurs should be totally independent not only of States but also of the bodies that appointed them. In that regard, although international instruments such as the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, under the terms of which various bodies had been established, contained common provisions, a different approach might promote enriching diversity and it would be appropriate for everyone to show a spirit of creativity and imagination in order to contribute thereby to progress in the field of human rights. In that connection, although coordination was necessary, standardization - with the consequent freezing of resources - which seemed to be the present trend, might be highly detrimental to the free will of everyone in the exercise of the functions entrusted to him. Finally, on the specific question of the possibility of a representative of the Committee attending the Commission on Human Rights, he shared Mr. Klein's opinion: the Committee should have access to information but should not involve itself in questions which did not necessarily fall within its terms of reference and which, in some cases, might even be solely political.

46. Lord COLVILLE thought that, as the meetings with States parties were apparently to continue, the Committee should derive optimum benefit therefrom. In that respect, he suggested that the agenda of those meetings should include an item concerning follow-up on the observations that the Committee adopted

under the Optional Protocol. For example, the Committee could request the States parties concerned to give a precise account of the measures that they had taken in the light of those observations and States parties that were not fully respecting their commitments in that field might follow the example set by other States parties which were more scrupulous in that regard. He hoped that his suggestion would be approved by the Committee.

47. Mr. ZAKHIA fully shared the opinions expressed by Mr. Lallah, who had referred to the most important aspects for the future work of the Committee and the human rights situation throughout the world. In fact, as a result of the phenomenon of globalization, States were losing their powers to an increasing extent while financial institutions, which were constantly becoming more powerful, were forcing States to restrict their expenditure, particularly in the economic and social fields. In that way, some countries were finding themselves in an extremely critical situation and were showing an increasing tendency to become militarized and fundamentalist police States. In those conditions, if it continued to address recommendations concerning human rights to States parties that were not in a position to apply them, the Committee would become purely academic. The gravity of that already serious problem would only increase. In that connection, following the example of the World Bank which had demanded that environmental impact studies be conducted before it granted aid to certain countries, bodies protecting human rights, and in particular the Committee, might likewise consider ways to encourage financial institutions to support their activities. In his opinion, such a measure was indispensable in view of the risk that a minority of rich countries might have the resources needed to ensure respect for human rights while the vast majority of poor countries, which had the greatest need for aid, might be unable to take practical steps to apply human rights.

48. Mr. POCAR said that one of the difficulties that impeded the work of the chairpersons of treaty bodies at their Eleventh meeting might have been attributable to the fact that the meeting's agenda had been prepared by the secretariat and not by the chairpersons themselves, a situation that should be avoided in the future. He shared the concerns expressed by Mr. Amor concerning the risks of excessive institutionalization and the importance of coordinating the activities of the various bodies while, at the same time, maintaining the independence of each of them. He saw no point in holding meetings with States parties within the framework of the meetings of the chairpersons of treaty bodies and hoped that that practice would be rapidly abandoned.

49. With regard to the draft report itself, he referred to paragraph 49, which stated that the chairpersons had urged States parties to support their work, particularly by allocating sufficient resources in the Fifth Committee, and said that such a decision totally exceeded the mandate of the treaty bodies. In fact, as far as the Committee was concerned, article 36 of the Covenant stipulated that the Secretary-General would provide it with the requisite staff and facilities and the Secretary-General himself was responsible for contacting the Fifth Committee, if necessary, on any financial questions. He likewise did not regard it as appropriate to indicate, as noted in paragraph 50, that States parties could comment on the concluding observations adopted following the consideration of their periodic reports. In that regard, States parties had an obligation to act, rather than comment,

on those observations. The report also seemed to emphasize the manner in which the treaty bodies could contribute to the work of the United Nations system, rather than the reverse, which was regrettable. For example, chapter IV was devoted to cooperation by the treaty bodies with United Nations departments, specialized agencies, funds, programmes and mechanisms while nothing was said about the support that the United Nations system itself could provide for the treaty bodies. Moreover, with reference to the last sentence in paragraph 26, he did not see how the person with principal responsibility for meetings of the Committee could officially select the parts of the Committee's concluding observations that would be "more interesting to the press", which seemed totally contrary to the principles that the Committee was following. Finally, concerning paragraph 45 of the draft report, he wondered what was meant by "supervisory organ" since, while the Committee had an effective obligation to submit a report to the General Assembly, the latter in no way acted as the Committee's supervisory organ.

50. Mr. LALLAH, referring to paragraph 51 of the draft report concerning the presence of chairpersons or representatives of treaty bodies at meetings of the General Assembly in which the annual reports of those bodies were considered, said that proposals to that effect, which had been considered during the first two or three years following the establishment of the Committee, had been rejected precisely because the Committee did not wish to give the impression that it was answerable to the General Assembly for its own work, which it was conducting in an independent manner. At all events, the decision taken at that time could always be reconsidered. However, in his opinion, it was difficult to imagine that the chairperson or a representative of the Committee would be held answerable to the General Assembly in respect of criticisms that might have been expressed regarding, for example, any of its general observations concerning a particular article of the Covenant.

51. Mr. ANDO shared the opinions expressed by Mr. Pocar and Mr. Lallah. With regard to the financial resources available to the Committee, he recalled that, several years previously, the Committee had sought funding, through him, from a private Japanese company in order to publish the summary records of the Committee's sessions which, for more than 10 years, had no longer been issued in the form of official documents. However, since it was normally the duty of the United Nations to ensure the publication of the documents of all the treaty bodies, that important question should be re-examined.

52. The CHAIRPERSON pointed out that the entire first part of the draft report consisted of a summary record of the discussions that had been held during the meeting of chairpersons and the expressions used therein did not necessarily imply that all the participants had reached a consensus. At all events, the draft report had elicited numerous comments and the Committee would continue its consideration thereof at a forthcoming meeting. Finally, in reply to Ms. Chanet's question, she said that the workshop on gender integration in the human rights protection system which she had attended had provided an opportunity for a useful exchange of information and suggestions between the special rapporteurs and the chairpersons of treaty bodies on that question but it had been of a relatively informal nature and had not led to any decision or particular commitment on the part of the participants.

The meeting rose at 1 p.m.